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KHAIRIDDIN SUFI

v.

PP

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COURT OF APPEAL, PUTRAJAYA

KN SEGARA JCA

SYED AHMAD HELMY JCA

ABDUL WAHAB PATAIL JCA

[CRIMINAL APPEAL NO: K-05-410-2010]

C

8 JUNE 2012

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CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking in 4,561.6g of cannabis - Appeal against conviction and sentence - Defence version contradicted prosecution's narration - Whether appellant had knowledge of drugs - Whether it was appellant who met SP5 and informer - Whether another person instructed appellant to carry bag containing cannabis - Whether defence an afterthought and bare denial - Whether any reasonable doubt raised - Whether trial judge misdirected and erred himself*

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Upon receiving an information that a certain drug transaction would take place, D/Kpl Mat Sedi bin Salleh ('SP5') impersonated himself as a drug buyer and along with the informer, met the appellant at a restaurant inside a supermarket. According to ASP Rosli Ismail ('SP3'), the appellant agreed to return at about 9pm

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on the same day with 5kg of cannabis. At about 9.30pm, the appellant arrived with a bag slinging on his shoulder. SP5 signalled to the already waiting ambush party and the appellant was arrested. The bag which the appellant was carrying contained a plastic bag ('P22') in which was five transparent plastic-wrapped

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and cello-taped compressed slabs of organic matter suspected to be cannabis. A chemist report revealed that the slabs were indeed cannabis weighing 4,561.6g. Before the High Court, the appellant was convicted and sentenced to death for the offence of drug trafficking under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA'). Hence, this appeal by the appellant. The present appeal centred on the contention that the learned trial judge had misdirected and erred himself. The issues for determination were:

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(i) whether it was the appellant who met SP5 and the informer; (ii) whether the appellant had knowledge of the drugs and the contents of the bag; and (iii) whether one Mukhlis was at the scene and had indeed instructed the appellant to carry the bag.

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Held (dismissing appeal; affirming conviction and sentence of High Court)

Per Abdul Wahab Patail JCA delivering the judgment of the court:

(1) SP3 was 10-20 feet away from the appellant at the material time and it was no great distance. Furthermore, they were in a restaurant inside a supermarket, not at some dark unlighted place. It was not impossible that SP3 could therefore recognise the appellant as the person who was with SP5 and the informer. Not knowing the appellant's name or remembering the colour of his shirt had nothing to do with the ability to visually identify the appellant. (para 22)

(2) During cross-examination, it was nowhere suggested that the appellant had informed that the bag was not his or that he did not know the nature of the contents. If the appellant was an innocent carrier and did not know the nature of the bag's content, he should have said so at the time of his arrest or, at the latest opportunity when the contents of the bag were shown to him. By not doing so, no reasonable doubt could arise on the defence. When an accused made no effort to exculpate himself when the occasion arose, his belated defence may be held as an afterthought. As afterthoughts, the substance that formed the foundation of the defences were not facts, certainly not evidence and therefore incapable of providing substance to the evaluation whether any reasonable doubt was raised. (paras 13-14 & 28)

(3) The defence was a bare denial and failed to raise any reasonable doubt. The appellant's version that one Mukhlis told him to take the bag and while holding the bag, the police rushed in, was also a direct contradiction of SP3's testimony which was corroborated by SP5. SP5 along with SP6 (the investigating officer) had replied at all times that they were not informed by anyone of Mukhlis's existence. Their reply was not contradicted by the cross-examiner. (paras 11 & 29-30)

Bahasa Malaysia Translation Of Headnotes

Setelah menerima maklumat bahawa suatu transaksi dadah akan berlaku, D/Kpl Mat Sedi bin Salleh ('SP5') telah menyamar sebagai pembeli dadah dan bersama-sama pemberi maklumat, telah bertemu dengan perayu di sebuah restoran di dalam sebuah pasar raya. Menurut ASP Rosli Ismail ('SP3'), perayu bersetuju untuk

- A kembali pada kira-kira pukul 9 malam pada hari yang sama dengan 5kg ganja. Pada kira-kira 9.30 malam, perayu tiba dengan beg tergalas pada bahunya. SP5 memberikan isyarat kepada pasukan serang hendap yang tersedia menunggu dan perayu kemudiannya ditangkap. Beg yang dibawa oleh perayu mengandungi beg plastik
- B ('P22') yang dalamnya terdapat lima bungkusan yang dibalut plastik lutsinar dan ketulan mampat bahan organik yang disyaki ganja. Laporan ahli kimia mendedahkan bahawa ketulan tersebut sememangnya ganja seberat 4,561.6g. Di Mahkamah Tinggi, perayu disabitkan dan dijatuhkan hukuman mati atas kesalahan mengedar dadah di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'). Dengan itu, rayuan ini oleh perayu. Rayuan ini tertumpu kepada hujahan bahawa yang arif hakim bicara telah tersalah arah akan dirinya dan terkhilaf. Isu-isu untuk diputuskan adalah: (i) sama ada perayu adalah orang yang bertemu SP5 dan pemberi maklumat; (ii) sama ada perayu mempunyai pengetahuan tentang dadah dan kandungan beg tersebut; dan (iii) sama ada seorang yang bernama Mukhlis berada di tempat kejadian dan merupakan orang yang mengarahkan perayu untuk membawa beg tersebut.
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- E **Diputuskan (menolak rayuan; mengesahkan sabitan dan hukuman Mahkamah Tinggi)**
Oleh Abdul Wahab Patail HMR menyampaikan penghakiman mahkamah:
- F (1) SP3 berada 10-20 kaki jauh dari perayu pada waktu material dan ia bukanlah jarak yang besar. Tambahan pula, mereka berada di dalam sebuah restoran yang terletak di dalam sebuah pasar raya, bukan sebuah tempat yang gelap tanpa cahaya. Ia dengan itu tidak mustahil bahawa SP3 boleh mengenali perayu sebagai orang yang bersama-sama dengan SP5 dan pemberi maklumat. Tidak mengetahui nama perayu atau mengingat warna bajunya tidak mempunyai apa-apa kaitan dengan keupayaan untuk mengenal pasti perayu secara visual.
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- H (2) Semasa pemeriksaan balas, tidak terdapat sebarang cadangan bahawa perayu telah memaklumkan bahawa beg tersebut bukan miliknya atau bahawa dia tidak mengetahui sifat kandungannya. Jika perayu adalah seorang pembawa tidak berdosa dan tidak mengetahui sifat kandungan beg tersebut, dia sepatutnya berkata demikian ketika ditangkap atau pada peluang mutakhir apabila kandungan beg tersebut ditunjukkan kepadanya. Dengan tidak berbuat sedemikian, tiada keraguan munasabah timbul apabila pembelaan. Apabila tertuduh tidak
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membuat sebarang usaha untuk membebaskan dirinya apabila peluang tersebut muncul, pembelaan terlewatnya mungkin akan diputuskan sebagai fikiran semula. Sebagai fikiran semula, hujahan yang membentuk asas pembelaan adalah bukan fakta, pastinya bukan bukti dan oleh itu tidak boleh menjadi asas hujahan bagi penilaian sama ada sebarang keraguan yang munasabah telah dibangkitkan.

- (3) Pembelaan merupakan penafian kosong dan gagal menimbulkan sebarang keraguan munasabah. Versi perayu bahawa Mukhlis mengarahkannya untuk mengambil beg dan semasa memegang beg tersebut, polis bergegas menangkapnya, juga secara langsung bercanggah dengan keterangan SP3 yang disokong oleh SP5. SP5 bersama-sama dengan SP6 (pegawai penyiasat) telah, pada setiap masa, menjawab bahawa mereka tidak dimaklumkan oleh sesiapa pun akan kewujudan Mukhlis. Jawapan mereka tidak disangkal oleh pemeriksa balas.

Case(s) referred to:

- AEG Carapiet v. AY Derderian* AIR (1961) Cal 359 (*refd*)
Ahmad Najib Aris v. PP [2009] 2 CLJ 800 FC (*refd*)
Megat Halim Megat Omar v. PP [2009] 1 CLJ 154; [2008] 1 LNS 547 CA (*refd*)
Miller v. Minister of Pensions [1947] 2 All ER 372 (*refd*)
Mirza Murtala v. PP [2010] 4 CLJ 150 CA (*refd*)
PP v. Chia Leong Foo [2000] 4 CLJ 649 HC (*refd*)
PP v. Mansor Md Rashid & Anor [1997] 1 CLJ 233 FC (*refd*)
PP v. Lin Lian Chen [1992] 4 CLJ 2086; [1992] 1 CLJ (Rep) 285 SC (*refd*)
PP v. Tan Ah Khong & Anor [1988] 1 CLJ 835; [1988] 2 CLJ (Rep) 329 HC (*refd*)
Tan Kim Ho & Anor v. PP [2009] 3 CLJ 236; [2009] 1 LNS 173 FC (*refd*)
Wan Marzuki Wan Abdullah v. PP [2008] 4 CLJ 631 CA (*refd*)
Wan Mohd Azman Hassan @ Wan Ali lwn. PP [2009] 1 LNS 776 CA (*refd*)

Legislation referred to:

- Dangerous Drugs Act 1952, ss. 2, 39B(1)(a), (2)
 For the appellant - S Selvi; M/s Gooi & Azura
 For the respondent - M Kwan Li Sa, DPP
 [Appeal from High Court, Alor Setar; Criminal Trial No: 45-09-2006]
 Reported by Najib Tamby

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JUDGMENT**Abdul Wahab Patail JCA:**

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[1] The appellant, Khairiddin bin Sufi was charged, tried, called to enter upon his defence, convicted and sentenced for an offence of trafficking in 4561.6 grams of cannabis under s. 39B(1)(a) of the Dangerous Drugs Act 1952 (DDA), an offence punishable under s. 39B(2) of the same Act, as follows:

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Bahawa kamu pada 3.3.2005, lebih kurang jam 9.30 malam, di tempat letak kereta Pasaraya Tesco, Sungai Petani di dalam Daerah Kuala Muda, di dalam Negeri Kedah Darul Aman, telah mengedar dadah berbahaya iaitu 4561.6 gram Cannabis, dan dengan itu kamu telah melakukan suatu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

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[2] The appeal before this court is against the conviction and sentence.

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[3] The grounds of appeal raised before this court were that the learned trial judge misdirected himself and erred when he:

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(1) held that the defence was an afterthought and bare denial whereas the evidence of the appellant was consistent with the suggestions put by the defence during the prosecution's case; and

(2) failed to appreciate that the element of knowledge has been rebutted by the defence.

Background Facts

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[4] The grounds of appeal before this court were centred upon the appreciation of the defence case. To do so, it is nevertheless necessary for reasons that become obvious below, to set out the background facts.

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[5] The case for the prosecution was that the appellant had, at about 9.30pm, in the carpark of the Tesco Supermarket in Sungai Petani, in the District of Kuala Muda in the State of Kedah Darul Aman, had trafficked in 4561.6 grams of cannabis, thereby committing an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 and punishable under s. 39B(2) thereof.

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[6] The above narrative of facts is what the prosecution must prove beyond reasonable doubt. The prosecution relied upon the following facts to prove that narrative. A

- (1) At about 4pm on 3 March 2005, ASP Rosli Ismail (SP3) had given a half-hour briefing at Pejabat Narkotik, IPK Kedah. It concerned information received of an impending drug transaction. The informer would introduce D/Kpl Mat Sedi bin Salleh (SP5) who was ordered to act as agent provocateur to buy cannabis. SP5 was given RM10,000 as “wang tunjuk”. After getting ready they proceeded to Sungai Petani. They arrived at the Sungai Petani Tesco Supermarket car-park at about 7pm where SP3 had introduced the registered informer to SP5. SP5 and the informer went into Restoran Nasi Kandar D’ Kayu located inside the supermarket. B
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- (2) At about 7.30pm, the appellant arrived and met with the informer and SP5. SP3 saw SP5 show something to the appellant. The meeting lasted about 15 minutes. D
- (3) SP3 was informed through a mobile telephone call from SP5 that the appellant would return at about 9pm with five kilograms of cannabis. E
- (4) At about 9.30pm, SP3 saw the appellant arrived with a bag slung on his right shoulder and came up to SP5 who was waiting in the carpark. As they walked together, SP5 gave the agreed signal and SP3 and his men rushed forward to arrest the appellant. The appellant threw aside the bag onto the road. There was a struggle between SP3’s men and the appellant before the latter was caught. F
- (5) Inspection of the contents of the bag in front of the appellant found a plastic bag (P22) within which was five transparent plastic wrapped and cello-taped compressed slabs of organic matter suspected to be cannabis. These were handed over to the investigations officer, ASP Mulkiaman bin Manzar, (SP6) who took them to the Government chemist Muhamad Hasirun bin Khalid (SP4). The chemist’s report of SP4 contained his finding that the compressed organic matter was 4,561.6 grams of cannabis as defined under the Dangerous Drugs Act 1952. G
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A Of Defence Being Afterthought And Denial

[7] The defence advanced was that:

- B** (1) it was not the appellant who met the informer and SP5 at the Restaurant Nasi Kandar D' Kayu;
- (2) he had no knowledge of the drugs and the contents of P23; and
- C** (3) it was Mukhlis who was at the scene, and who instructed the appellant to carry P23.

D **[8]** It was submitted that the learned trial judge had misdirected himself when he held that the defence was an afterthought and bare denial whereas the evidence of the appellant was consistent with the suggestions put by the defence during the prosecution's case.

E **[9]** The learned trial judge had directed himself by relying on *PP v. Lin Lian Chen* [1992] 4 CLJ 2086; [1992] 1 CLJ (Rep) 285 where Edgar Joseph SCJ had this to say as to afterthought:

F The trial judge appreciated correct law when he held, as he did in fact hold, that the defence is entitled, through cross-examination of prosecution witnesses, to put its case at the earliest possible stage. Indeed, it behoves the defence to do so, for we need hardly say that if a defence is sprung in court for the first time when the accused makes his defence from the witness box or the dock so that the prosecution is taken by surprise, the accused runs the risk of being criticized for having kept his defence 'up his sleeve', so to speak, and it being branded as a recent invention.

G **[10]** That a defence is "a recent invention" essentially means not only it is not true, but it is also not fact and certainly not evidence to be taken into consideration. Other references to such defences may be found in *Megat Halim Megat Omar v. PP* [2009] 1 CLJ 154; [2008] 1 LNS 547; *AEG Carapiet v. AY Derderian* AIR 1961 Cal 359. In the latter case, it was said:

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I It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination

is being made comes to give and lead evidence by producing witnesses. It has been stated on high authority of the House of Lords that this much a counsel is bound to do when cross-examination that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share.

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[11] In *Tan Kim Ho & Anor v. PP* [2009] 3 CLJ 236; [2009] 1 LNS 173, the Federal Court held at para. 36 of its judgment that:

This is however not to say that there is any burden placed on the accused to disprove any guilt or to prove innocence. It is only assessing the credibility of a witness, in this case the 2nd appellant's credibility. In order to determine whether an accused was telling the truth, one of the considerations is whether he had indicated his defence during the prosecution's case.

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We observe that the case law as to "defence being an afterthought" is usually in reference to not putting the defence to the relevant prosecution's witnesses at trial. Perusing the cross-examination of SP3, SP5 and SP6, we found that nowhere was it suggested that the appellant had informed SP3, SP5 or SP6 that the bag was not his and that he did not know the nature of the contents. And SP5 and SP6 had replied that at all times, in this case, they had not been told of the existence of Mukhlis by anyone. That reply was not contradicted by the cross-examiner.

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[12] We turn to consider whether rejection as an afterthought applies also to not raising a defence at the earliest occasion arising after arrest but before trial.

[13] It has been said that where the law gives a person the right to be silent, it is wrong for the court to infer that his silence is incriminating: *PP v. Tan Ah Khong & Anor* [1988] 1 CLJ 835; [1988] 2 CLJ (Rep) 329. The law gives the right to remain silent as a right against self incrimination. The afterthought occurring in defences are always in nature and intent, exculpatory statements. Being exculpatory rather than incriminating, we find no reason why, if the appellant was a purely innocent carrier and did not know the nature of the contents of the bag, he should not have said so at the earliest occasion for an explanation arises, and if he does not do so, no reasonable doubt can arise on that defence when made later. We find support for this reasoning in the

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- A decision of the Federal Court in *Ahmad Najib Aris v. PP* [2009] 2 CLJ 800 where Zulkefli Makinudin FCJ reasoned, in respect to the right to remain silent when an accused is called to enter upon his defence that:
- B [48] With respect ..., I am of the view that when the appellant chooses to remain silent, the court is put in a situation where it has no other choice but to convict the appellant on both charges as the appellant had failed to rebut the evidence adduced by prosecution's witnesses ...
- C ...
- D [50] It is my view that an accused's right to remain silent is not at all infringed by the principle of "if unrebutted would warrant a conviction". It means what it says. The evidence adduced must be such that it must warrant a conviction if it is unrebutted. Therefore, the appellant's failure to call other witnesses to rebut the prosecution's case leaves the court with no other alternative but to convict him.
- E [14] We reason similarly that if an accused makes no effort to exculpate himself when the occasion to do so arises, then on the assessment of his defence raised belatedly as to whether it raises a reasonable doubt, he runs the risk that it may be held to be an afterthought, and it being exculpatory is not a denial of the right to remain silent. We hold that an exculpatory statement, which
- F could have been made earlier but was not, when disclosed belatedly without giving reason therefor, may be dismissed as an afterthought.
- G [15] The obvious occasion to say the bag was not his and that he did not know the nature of the contents of it arose at the time of his arrest or at the latest when the contents of the bag were brought out of the bag in front of him. Not later, and certainly not when it only emerges at the trial. If raised only at the prosecution stage of the case, that is of little weight, unless it is conceded by the prosecution, because raising it at the eleventh
- H hour makes it an assertion for which no opportunity was given to verify its truth or correctness. This applies particularly to the assertion in the defence that there is that other person whose name is Mukhlis. Without any explanation as to why such exculpatory statement was not made earlier, it is an afterthought.
- I An afterthought does not constitute fact, let alone evidence of its content. There is nothing, therefore, for the court to consider.

Having put the suggestions to the prosecution witnesses, without more, cannot and therefore does not elevate such exculpatory assertions in the testimony of the accused, sworn on oath or otherwise, to evidence to be considered. A

[16] We find the learned trial judge did not err in holding that the defence was an afterthought. B

[17] The real issue is not whether the appellant's defence is believed or not but whether the appellant's defence raised a reasonable doubt. In such a consideration, it is essential to understand what exactly is a reasonable doubt? A reasonable doubt is probably best described by Denning J in *Miller v. Minister of Pensions* [1947] 2 All ER 372: C

[The degree of cogency] ... need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice. D E

[18] What it means is that it is not a reasonable doubt if it is merely a surmise, a supposition that may be true but with no evidence to give it the least probability that it may be true. To be more than a surmise, the supposition must condescend to the facts. There must be some fact or evidence in the particular case to show at least a bit of probability it may be true for the surmise to become a reasonable doubt. Otherwise, it would be child's play to escape responsibility and gain acquittal by constructing a version and maintaining that version from the first morning of trial to the end of the trial. That would make the law into a game for gamers, far removed from the intent that a criminal trial is the occasion for the court to examine the evidence of the prosecution under a maximum evaluation assisted by counsel for the prosecution and the defence to determine whether the offence the accused is charged with is proven beyond reasonable doubt. F G H

[19] It was further submitted that SP3 had testified that he had the telephone number of the drug seller but when the appellant was arrested, no handphone was found on him. I

- A [20] This concerns the finding at the prosecution stage of the case and not at the defence case. In any case, the fact that no telephone was found upon a person when he is arrested, on its own has no bearing on whether he has a telephone or not. We further find that nothing prevents a person from giving or using another person's telephone number as a means of contacting him.
- B Until the day a telephone is installed in such a way upon the person of an individual so that it is synonymous with his identity, no reasonable doubt can be drawn from the fact of not finding a telephone alone upon a person of an accused who was arrested
- C when allegedly the "seller" had given a telephone number.

- [21] Learned counsel erred in submitting that it was SP3's view that it was the appellant who met PW5 and the informer. His testimony must be read as a whole. He had testified in cross-examination, and this testimony was not contradicted or rejected
- D by the cross-examiner, as follows:

Jarak saya dengan kedudukan AP, sumber dan OKT adalah lebih kurang 10-20 kaki. Tumpuan saya ialah ke atas ketiga-tiga mereka iaitu AP, sumber dan OKT.

- E Meja yang diduduki oleh AP, sumber dan OKT terletak di penjuru Restoran tersebut yang boleh saya lihat dari arah luar kedai.

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- F Pada pertemuan pertama, saya boleh cam lelaki yang berjumpa AP itu ialah OKT.

- [22] Ten to twenty feet is no great distance. They were in a restaurant located in a supermarket, not some dark unlighted spot.
- G It is not impossible, and certainly not incredible that he could recognise the appellant as the person who was with SP5 and the informer. Since of the three persons, two were faces he knew, there would be only natural he could direct his attention upon the appellant who after all was the "target" he was concerned with.
- H Not knowing the name of the appellant beforehand and not able to remember the colour of his shirt has nothing to do with ability to visually identify the appellant. Regardless what couturiers would have one believe, it is the person not his clothes he wears or the name he is called by that identifies the person.

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[23] In conclusion on this issue, we find no error in principle, law or in fact on the part of the learned trial judge upon whom the responsibility for a fair and just decision rests to warrant appellate intervention. To intervene when there is no error is interference.

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The Element Of Knowledge

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[24] The second ground of appeal is that the learned trial judge misdirected himself when he failed to appreciate that the element of knowledge has been rebutted by the defence.

[25] The foundation of this submission is that it was not the appellant who met the informer and PW5 at the Restaurant Nasi Kandar D'Kayu and that it was Mukhlis who asked the appellant to carry P23. Therefore, the appellant had no knowledge of the nature of the contents of P23.

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[26] It was conceded that at the prosecution stage these defences was put as suggestions. But being denied by the witnesses to whom they were put, there was no evidence for consideration whether a reasonable doubt was raised. It was submitted, however, that because the appellant had testified on oath, these defences had crystallised into evidence, and since the burden of proving beyond reasonable doubt remains always upon the prosecution, the prosecution must negate these defences.

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[27] It was submitted that a reasonable doubt was raised as to whether he had knowledge:

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(1) Because the defence advanced was consistent with the defence stand during the prosecution's case, it was not an afterthought defence, and since it was not demolished in cross-examination by the prosecution, the defence has raised a reasonable doubt on the element of knowledge.

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(2) Because while admitting to momentary custody and control of P23, the brief period of time in which the appellant was seen carrying P23 shows no sufficient lapse of time for the appellant to examine what he was carrying, and the lack of evidence adduced by the prosecution to directly prove that the appellant had knowledge of what he was carrying gives rise to more than one inference to be drawn, in which case the inference most favourable to the appellant ought to be drawn.

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A [28] That the appellant had momentary custody and possession
of P23 depended entirely upon the defence being accepted as a
defence to be considered. Since it is part and parcel of the
appellant's testimony in exculpation which is an afterthought, it is
not fact or evidence before the court, and therefore there was
B nothing in the form of fact or evidence that could be taken into
consideration as to whether a reasonable doubt was raised. While
it is true that the appellant had testified on oath and had been
cross-examined, the substance of his testimony were defences the
exculpatory nature of which were such there was no reason for
C him, under the right to silence, to withhold. Without a reasonable
explanation why he had withheld it, the only conclusion is that he
took the risk that the failure to assert it at the earliest occasion
could lead to the conclusion that the defences were, as dealt with
earlier above, afterthoughts. As afterthoughts the substance that
D formed the foundation of the defences are not fact, certainly not
evidence, and therefore incapable of providing substance to the
evaluation whether any reasonable doubt was raised.

[29] The sum of the evidence before the court was that there
was the prosecution's version that the appellant was the trafficker
who met with SP5 and the informer in Restaurant Nasi Kandar
D'Kayu and who later returned with P23, and the appellant's
version that he was not the person who met with SP5 and the
informer, but he had gone to the Sungai Siput Tesco Supermarket
F with his friend Mukhlis, who met with one Arif before Mukhlis told
the appellant to take the bag from his motorcycle and hand it over
to Arif. According to him, while doing so, he looked back but
found Arif was not there and while he paused, the police rushed
in.

G [30] His version is a direct contradiction of the testimony of SP3
which was corroborated by SP5. Both SP3 and SP5 are police
officers. There were no reasons advanced why SP3 and SP5
would want to falsely accuse the appellant. No suggestion was put
to SP3 and SP5 of any reason why they would falsely accuse the
H appellant, and to be fair, no such accusation was made by the
appellant in his testimony. There was no other evidence to lend it
the slightest bit of probability it might be true. The defence was,
as so described by the learned trial judge, a bare denial and that
I it failed to raise any reasonable doubt.

[31] We observed that the prosecution evidence showed only agreement to sell the cannabis and subsequent production of it but the cannabis had not changed hands. However, trafficking includes sale (see s. 2 of the Dangerous Drugs Act 1952) and a sale, unlike a charge of possession, does not involve as a prerequisite the element of possession (see *PP v. Mansor Md Rashid & Anor* [1997] 1 CLJ 233; *PP v. Chia Leong Foo* [2000] 4 CLJ 649.) Nor is payment a prerequisite (*Wan Mohd Azman Hassan @ Wan Ali lwn. PP* [2009] 1 LNS 776; *Wan Marzuki Wan Abdullah v. PP* [2008] 4 CLJ 631; *Mirza Murtala v. PP* [2010] 4 CLJ 150.)

[32] We find the learned trial judge did not err in law, principle or fact. We dismissed the appeal on both grounds advance and confirmed the conviction and sentence of the High Court.

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